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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 BIRDDOG TECHNOLOGY
LIMITED, an Australian company;
12 and BIRDDOG AUSTRALIA PTY,
LTD, an Australian company,

13 Plaintiffs,

14
15 v.

16 2082 TECHNOLOGY, LLC DBA
BOLIN TECHNOLOGY, a California
limited liability company; BOLIN
17 TECHNOLOGY CO., LTD., a Chinese
limited company; HOI "KYLE" LO, an
18 individual; JENNIFER LEE, an
individual; and DOES 3 through 25,
19 inclusive,

20 Defendants.
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Case No. 2:23-cv-09416 CAS (AGRx)

**PLAINTIFFS BIRDDOG
TECHNOLOGY LIMITED'S AND
BIRDDOG AUSTRALIA PTY LTD'S
OPPOSITION TO DEFENDANT
JENNIFER LEE'S MOTION TO
DISMISS**

*[Filed concurrently with Opposition to
Defendant's Request for Judicial Notice]*

Judge: Hon. Christina A. Snyder
Date: March 11, 2024
Time: 10:00 a.m.
Courtroom: 8D

Complaint Filed: November 7, 2023
FAC filed: January 12, 2024

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1 **I. INTRODUCTION**

2 Attempting to avoid accountability for her misdeeds, Defendant Jennifer Lee
3 (“Ms. Lee”) endeavors to point the finger at the other defendants—2082 Technology
4 LLC dba Bolin Technology (“Bolin LLC”) and its manufacturing arm Bolin
5 Technology Co. Ltd. (“Bolin Limited” together with Bolin LLC, “Bolin
6 Defendants”) and Hoi “Kyle” Lo (“Mr. Lo”).

7 The truth of the matter is that Ms. Lee only points the finger at her co-
8 conspirators. What Ms. Lee attempts to hide from the Court is that she, along with
9 her husband, Mr. Lo, control the Bolin Defendants as their Chief Operating Officer
10 and Chief Executive Officer, respectively. And further, the Defendants¹ together
11 formulated and effectuated a plan to convince Plaintiffs BirdDog Technology
12 Limited and BirdDog Australia Pty Ltd (“Plaintiffs” or “BirdDog”) to entrust them
13 with its funds and highly confidential information, hold and brazenly misuse and
14 misappropriate the same to apply pressure on BirdDog, create competing cameras,
15 and steal BirdDog’s clients and economic relationships for themselves.

16 Contrary to her protestations, Ms. Lee was not some innocent party or passive
17 participant. She was a critical player working with the other defendants from the
18 very inception of their scheme. This wide-ranging, unlawful and systematic scheme
19 included Defendants’ attempts to take control of BirdDog and culminated in (1) their
20 theft of more than \$3,000,000 in Plaintiffs’ money pursuant to contracts for the
21 supply of cameras (FAC, ¶¶ 4-6; 45-53; 54-67; 68-83); together with (2) their
22 ongoing misappropriation of reams of BirdDog’s highly valuable confidential and
23 proprietary information obtained in violation of a comprehensive nondisclosure
24 agreement and the trade secrets laws of the United States (FAC, ¶¶ 4-6, 28-33; 34-
25 38; 40-67; 84-103).

26
27
28 ¹ “Defendants” refers collectively to Bolin LLC, Bolin Limited, Mr. Lo, and Ms. Lee.

1 BirdDog's pleading shows that Bolin LLC, Bolin Limited, Mr. Lo and Ms. Lee
2 carried out this unlawful scheme by, first, gaining BirdDog's trust. Together, they
3 (i) represented that they had "over 15 years' experience" that BirdDog could use in
4 connection with its developing and evolving camera manufacturing needs (FAC, ¶¶
5 35-36, 38), and (ii) executed a comprehensive nondisclosure agreement
6 acknowledging their receipt of the "valuable and proprietary information of
7 BirdDog" and requiring Defendants to "maintain the confidential nature of" and "not
8 use or disclose or reproduce [such information]...for any purpose" without
9 BirdDog's consent. (FAC, ¶¶ 37, 84-88.)

10 Next, Ms. Lee and Mr. Lo (i) induced BirdDog executives to meet them in
11 Southern California for the purpose of acquiring BirdDog confidential information
12 and trade secrets (under, as it would turn out, false pretenses), and (ii) convinced
13 BirdDog to enter into agreements and pay Ms. Lee, together with Bolin Limited,
14 Bolin LLC, Mr. Lo, over \$3,000,000 pursuant to those contracts. (FAC, ¶¶ 40-53,
15 68-83.) Finally, they pounced: when BirdDog rejected Defendants' hostile takeover
16 overtures (FAC, ¶¶ 54-59), Defendants repudiated each of the agreements, stole
17 BirdDog's money, misappropriated BirdDog's confidential information and trade
18 secrets, and utilized BirdDog's assets to develop, manufacture and ultimately to sell
19 competing cameras. (FAC, ¶¶ 60-67.)

20 Ms. Lee's Motion does not address, let alone answer for, her role in the
21 scheme. She attempts to deflect culpability by stating she "was not a party to any
22 alleged contracts with Plaintiffs" (Mot., at 8:2) and that BirdDog's claims against her
23 fail because the "claims in general are all premised on the existence of a contractual
24 relationship with [Bolin LLC] which simply did not exist[.]" (Mot., at 8:4-5.) Ms.
25 Lee appears to be responding to a different complaint altogether. BirdDog never
26 alleged Ms. Lee was a party to the contracts and brings no claims for breach of
27 contract against her. (See FAC.) Instead, BirdDog alleges Ms. Lee conspired with
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1 the other defendants to effectuate their unlawful scheme. (FAC, ¶¶ 4-6; 10-14; 20;
 2 36-45; 48-53; 54-67; 68-83.) Ms. Lee ignores these facts and resorts to pointing
 3 fingers while falsely claiming that BirdDog’s pleading is “devoid of the necessary
 4 facts,” “consist[s] solely of conclusory allegations,” and “fail[s] to allege...claims
 5 consistent” with Rules 8 and 9(b). (Mot., at 8:11-13.) Ms. Lee then contends that
 6 the FAC “improperly attempt[s] to transform a contract case into a tort action[.]”
 7 (Mot., at 8:23-25.)

8 Ms. Lee’s factual denials are not susceptible to resolution on a motion to
 9 dismiss. Ms. Lee’s invitation to find in her favor on disputed issues of fact, together
 10 with her attempt to point the finger at her *co-conspirators* and failure to meaningfully
 11 address any of BirdDog’s claims, is telling. The Motion should be denied in its
 12 entirety so Ms. Lee can be held accountable for her individual actions and prominent
 13 role in Defendants’ illicit scheme.

14 **II. FACTUAL BACKGROUND**

15 Based in Australia, BirdDog is an internationally-renowned vendor of
 16 streaming video technology. (FAC ¶ 2.) Bolin LLC and Bolin Limited are each
 17 controlled by Chief Executive Officer Mr. Lo and managed by Chief Operating
 18 Officer Ms. Lee, with Bolin Limited as the manufacturing arm of Bolin LLC. (FAC
 19 ¶ 3.) Mr. Lo and Ms. Lee control and manage the Bolin Defendants from their home
 20 in Arcadia, California as well as their offices in Brea, California. (FAC ¶ 3, 10.)

21 Due to Mr. Lo and Ms. Lee’s representations, BirdDog agreed to engage Bolin
 22 LLC and Bolin Limited, signed them to a comprehensive nondisclosure agreement
 23 (the “Nondisclosure Agreement”), and started an economic relationship that would
 24 eventually result in BirdDog sharing sensitive confidential information and trade
 25 secrets with the Defendants and with the Bolin Defendants becoming BirdDog’s
 26 primary supplier of camera products. (FAC ¶¶ 4-5; 40-42; 92-95; and 101.)

1 On numerous occasions between 2019 and 2022 BirdDog Chief Executive Dan
2 Miall (“Mr. Miall”) met Mr. Lo and Ms. Lee at, among other locations, their personal
3 residence in Arcadia, California and at the offices of the Bolin Defendants in Brea,
4 California. (FAC ¶ 41-42.) During these meetings, Mr. Lo together with Ms. Lee
5 conducted negotiations for agreements with and otherwise induced Mr. Miall to
6 provide them and the Bolin Defendants with Plaintiffs’ competitively sensitive
7 confidential and proprietary information relating to BirdDog’s product portfolio and
8 product development, including Plaintiffs’ trade secrets. (FAC ¶ 41-42.)

9 By 2023, it had become clear that Bolin LLC, Bolin Limited, Mr. Lo and Ms.
10 Lee had devised a plan to convince BirdDog to entrust them with BirdDog’s funds
11 and highly confidential information, hold and brazenly misuse and misappropriate
12 those funds and highly sensitive information to apply pressure on BirdDog, create
13 competing cameras and steal BirdDog’s clients and economic relationships for
14 themselves. (FAC ¶ 4-6; 40-42; 45-53; 54-67; 68-83.) Defendants took these actions
15 as part of their scheme to become BirdDog by misappropriating BirdDog’s
16 confidential and proprietary information to produce and distribute competing camera
17 products. (FAC ¶ 63.)

18 Then, in 2023, when BirdDog rejected Defendants’ hostile takeover overtures
19 (FAC, ¶¶ 54-59), Defendants repudiated each of their existing agreements, stole
20 BirdDog’s money, misappropriated BirdDog’s confidential information and trade
21 secrets, and utilized BirdDog’s assets to develop, manufacture and ultimately to sell
22 competing cameras. (FAC, ¶¶ 60-67.)

23 It was *only* due to BirdDog’s good faith trust in Mr. Lo and Ms. Lee’s repeated
24 representations that BirdDog paid these funds to Defendants and provided them with
25 its trade secrets. (FAC, ¶¶ 36, 38, 46-47, 49-50, 52-53.) Then, when BirdDog simply
26 requested the return of its more than \$3,000,000 in funds, the Bolin Defendants, Mr.
27 Lo and Ms. Lee flatly refused. (FAC, ¶¶ 6, 109, 115, and 118.)

Due to Mr. Lo and Ms. Lee’s conduct, BirdDog has been unable to fulfill orders and ship products and is further being damaged through the Defendants’ unlawful possession and use of BirdDog’s confidential and proprietary information (illicitly obtained through Mr. Lo and Ms. Lee (FAC ¶¶ 42, 48, 51, 92, and 93)) to compete with BirdDog in the marketplace. (FAC ¶ 67.)

III. JUDICIAL STANDARD

A complaint need only contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Under Rule 12(b)(6), dismissal is only appropriate when a party “fail[s] to state a claim upon which relief can be granted.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). In other words, the complaint must only “contain sufficient factual allegations ‘to raise a right to relief above the speculative level.’” *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 599 F.Supp.2d 1179, 1184 (N.D. Cal. 2009).

As BirdDog has previously pointed out, “question[s] of fact [are] inappropriate for resolution on a motion to dismiss.” *Hybrid Financial Ltd. v. Hammitt, Inc.*, 2023 WL 3150092, at *1 (C.D. Cal. Mar. 6, 2023) (quoting *Greenwich Ins. Co. v. Rodgers*, 729 F. Supp. 2d 1158, 1164 (C.D. Cal. 2010)). The court must, rather, accept all allegations of material fact as “true and construed in the light most favorable to the nonmoving party.” *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 37-38 (9th Cir. 1996); accord *Reprod. Health Servs. v. Strange*, 3 F.4th 1240, 1258 (11th Cir. 2021) (court must “accept as true the allegations in the pleadings of the non-moving party and draw all reasonable inferences in that party’s favor”), *rev’d on other grounds*, 22 F.4th 1346 (11th Cir. 2022). A court should “‘assume the [] veracity’ of ‘well pleaded factual allegations’ and ‘determine whether they plausibly give rise to an entitlement of relief.’” *Eclectic Properties East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (internal citations omitted)).

1 **IV. ARGUMENT**

2 **A. BirdDog Properly Alleges Ms. Lee Was A Joint Tortfeasor.**

3 Ms. Lee's denial of any involvement is unavailing and contradicts the FAC.
 4 The pleading shows the nature of her involvement, both directly and as a co-
 5 conspirator. Even if a particular defendant was not the perpetrator of a particular tort,
 6 that defendant can be held liable if she was a conspirator. "By participation in a civil
 7 conspiracy, a coconspirator effectively adopts as his or her own the torts of other
 8 coconspirators within the ambit of the conspiracy." *Applied Equip. Corp. v. Litton*
 9 *Saudi Arabia Ltd.*, 7 Cal. 4th 503, 511 (1994). "[T]he major significance of the
 10 conspiracy lies in the fact that it renders each participant in the wrongful act
 11 responsible as a joint tortfeasor for all damages ensuing from the wrong, irrespective
 12 of whether or not he was a direct actor and regardless of the degree of his activity." *Id.*
 13 (quoting *Doctors' Co. v. Superior Ct.*, 49 Cal. 3d 39, 44 (1989)). In order for
 14 parties to be constituted as joint tortfeasors, the following elements must exist: "(1)
 15 [a] concert of action; (2) [a] unity of purpose or design; (3) [t]wo or more defendants
 16 working separately but to a common purpose and each acting with the knowledge
 17 and consent of the others." *Alexander v. Hammarberg*, 103 Cal. App. 2d 872, 879
 18 (1951); *see also Appel v. Bos. Nat'l Title Agency, LLC*, 2019 WL 3858888, at *8
 19 (S.D. Cal. Aug. 15, 2019) (finding plaintiffs adequately alleged the two defendants
 20 were joint tortfeasors where defendants refused to return plaintiff's escrow funds).

21 While BirdDog's breach of contract claims are only against the Bolin
 22 Defendants, Ms. Lee, together with Mr. Lo and the Bolin Defendants, conspired to
 23 effectuate various wrongs against BirdDog. Ms. Lee attempts to avoid accountability
 24 for her misdeeds by pointing the finger at the other defendants (her coconspirators)
 25 while ignoring her pivotal role in their scheme. Ms. Lee, both in her individual
 26 capacity and through her control of the Bolin Defendants effectuated a wide-ranging,
 27 unlawful and systematic scheme to take control of BirdDog. Because of Mr. Lo and
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1 Ms. Lee's representations, BirdDog agreed to engage Bolin LLC and Bolin Limited,
2 signed them to the Nondisclosure Agreement, and started an economic relationship
3 that would eventually result in BirdDog sharing sensitive confidential information
4 and trade secrets with the Defendants and with the Bolin Defendants becoming
5 BirdDog's primary supplier of camera products. (FAC, ¶¶ 4; 40-42; 92-95; and 101.)

6 This scheme resulted in (1) Defendants' theft of more than \$3,000,000 in
7 Plaintiffs' money pursuant to six contracts for the supply of cameras (FAC, ¶¶ 4-6;
8 45-53; 54-67; 68-83); together with (2) Defendants' ongoing misappropriation of
9 reams of Plaintiffs' highly valuable confidential and proprietary information obtained
10 in violation of a comprehensive nondisclosure agreement and the trade secrets laws
11 of the United States (FAC, ¶¶ 4-6, 28-33; 34-38; 40-67; 84-103).

12 To effectuate this scheme, Ms. Lee and the other defendants induced (i)
13 BirdDog executives to meet them in Southern California (including at Mr. Lo and
14 Ms. Lee's personal residence for dinner) for the purpose of acquiring BirdDog
15 confidential information and trade secrets (under, as it would turn out, false
16 pretenses), and (ii) BirdDog to enter into six agreements and pay Ms. Lee, together
17 with Bolin Limited, Bolin LLC, and Mr. Lo, over \$3,000,000 pursuant to those
18 contracts (FAC, ¶¶ 40-53, 68-83). Finally, when BirdDog rejected Defendants'
19 hostile takeover overtures (FAC, ¶¶ 54-59), Defendants repudiated each of the
20 agreements, stole BirdDog's money, misappropriated BirdDog's confidential
21 information and trade secrets, and utilized BirdDog's assets to develop, manufacture
22 and ultimately to sell competing cameras. (FAC, ¶¶ 60-67.)

23 In fact, it was *only* due to BirdDog's good faith trust of Mr. Lo and Ms. Lee's
24 repeated representations that BirdDog paid these funds to Defendants and provided
25 them with its trade secrets. (FAC, ¶¶ 36, 38, 46-47, 49-50, 52-53.) Then, when
26 BirdDog simply requested the return of its more than \$3,000,000 in funds, the Bolin
27 Defendants, Mr. Lo and Ms. Lee flatly refused. (FAC, ¶¶ 6, 109, 115, and 118.) And
28

1 now, due to Mr. Lo and Ms. Lee's conduct, BirdDog has been unable to fulfill orders
 2 and ship products and is further being damaged through the Defendants' unlawful
 3 possession and use of BirdDog's confidential and proprietary information (illicitly
 4 obtained through Mr. Lo and Ms. Lee (FAC ¶¶ 42, 48, 51, 92, and 93)) to compete
 5 with BirdDog in the marketplace. (FAC ¶ 67.) In short, it would appear Mr. Lo and
 6 Ms. Lee's unlawful scheme is paying off.

7 Not only does Ms. Lee have liability individually for her role in Defendants'
 8 scheme but because Ms. Lee endeavored with the other defendants in (1) a concert
 9 of action; under (2) a unity of purpose or design; while (3) working to a common
 10 purpose and each acting with the knowledge and consent of the others, BirdDog
 11 sufficiently alleges that Ms. Lee is a joint tortfeasor of the other defendants.

12 **B. BirdDog Pleads Sufficient Facts To State DTSA And CUTSA**
 13 **Claims Against Ms. Lee.**

14 Ms. Lee glosses over BirdDog's trade secret claims, stating BirdDog "fails to
 15 tie them specifically to Ms. Lee[.]" (Mot., at 13:9-10.) BirdDog not only ties its
 16 trade secret claims directly to Ms. Lee individually and in her role as a coconspirator
 17 but BirdDog adequately alleges (1) the existence and ownership of its trade secrets
 18 (including the Technical Trade Secrets and Economic Trade Secrets); (2)
 19 misappropriation of its trade secrets; and (3) damage caused by Defendants'
 20 misappropriation. (FAC, ¶¶ 27-33; 89-103); *see GA Telesis, LLC v. Salesforce.com,*
 21 *Inc.*, 2021 WL 5178803, at *1 (N.D. Cal. Nov. 8, 2021) (elements of DTSA and
 22 CUTSA claims). No doubt aware of this, Ms. Lee then confines her arguments to
 23 claims that contradict the pleadings, claiming that BirdDog failed to (1) delineate
 24 between any of the Defendants such that it is unclear which individual or entity
 25 committed which alleged act of misappropriation (Mot. at 11:28-12:2); (2) identify
 26 the trade secrets that Ms. Lee misappropriated as the trade secret was not disclosed
 27 with a sufficient degree of particularity (12:14-17); and (3) allege that Ms. Lee
 28

1 misappropriated any of BirdDog's trade secrets. (Mot. at 13:4-5.) None of this is
2 accurate.

3 **i. Ms. Lee's Defendant Delineation Argument Contradicts The**
4 **Pleadings.**

5 As BirdDog's trade secret claims are against all Defendants, and Ms. Lee
6 conspired with the other defendants in their scheme to misappropriate these trade
7 secrets, the FAC discusses each defendant and their role in this scheme. However,
8 seemingly without shame, Ms. Lee asserts that BirdDog fails to delineate between
9 the Defendants in its FAC as it pertains to BirdDog's trade secrets claims. (Mot. at
10 11:27-12:2.) As supposed support for this proposition, Ms. Lee cites to *Physician's*
11 *Surrogacy, Inc. v. German*, 2018 WL 638229, (S.D. Cal. Jan. 31, 2018), and
12 *Vendavo, Inc. v. Price f(x) AG*, 2018 WL 1456697, (N.D. Cal. Mar. 23, 2018). In
13 *Physician's Surgery, Inc.*, the court was unable "to draw a reasonable inference about
14 which individual Defendant [was] liable for which acts[]" because the plaintiffs
15 failed to identify when the conduct occurred and used "legal conclusions couched as
16 a factual allegation[:]" "Defendants, and each of them, are willfully and improperly
17 using [the alleged trade secrets] and intend to disclose and use [the alleged trade
18 secrets]" 2018 WL 1456697 at *9. In *Vendavo*, the court granted a motion to dismiss
19 a trade secrets claim because the complaint failed to distinguish between defendants
20 who were a German Corporation and a Delaware Corporation. *Vendavo, Inc.*, 2018
21 WL 1456697 at *4.

22 However, BirdDog's FAC is distinguishable. Ms. Lee's actions (along with
23 those of her co-conspirators) are described in the FAC in detail. Unlike the cases
24 cited by Ms. Lee, BirdDog describes each defendant in relation to the DTSA and
25 CUTSA claims throughout the FAC. In addition to extensive allegations that Bolin
26 LLC, Bolin Limited, Mr. Lo and Ms. Lee were and are joint tortfeasors (FAC, ¶¶ 16,
27 20, 34-39, 40-43, 44-67), BirdDog explicitly alleges that Ms. Lee participated in an
28

1 unlawful scheme to induce BirdDog to provide them with and improperly acquire,
 2 use, and disclose trade secrets not only at the Bolin Defendants' California
 3 headquarters but also at Ms. Lee's personal residence. (FAC ¶¶ 42, 48, 51, 92, and
 4 93.) *Vendavo* and *Physician's Surrogacy, Inc.* are inapposite.

5 **ii. BirdDog Sufficiently Identified Its Trade Secrets.**

6 Ms. Lee's belief that BirdDog must provide every detail of every trade secret it
 7 alleges (and thus destroy its trade secrets) in order to survive a motion to dismiss
 8 (Mot. at 11:27-13:24) is contrary to law. BirdDog need not "spell out the details of
 9 the trade secret" in its pleading. *Arthur J. Gallagher & Co. v. Tarantino*, 498 F.
 10 Supp. 3d 1155, 1171 (N.D. Cal. 2020). Rather, BirdDog need only claim "something
 11 beyond general knowledge" sufficient to "put the defendant on notice of what the
 12 theft is about." *Id.* (sufficient for plaintiff to allege misappropriation of "current
 13 Gallagher client lists, which include information on the value of the clients' claims
 14 over the years, client contacts, internal notes regarding particular clients'
 15 expectations and preferences; (2) internal Gallagher documents and strategies
 16 regarding client policy structuring, client premium reports, and extensive budget and
 17 other financial information regarding Gallagher's business; and (3) client retention
 18 and renewal strategies and information, among other confidential and/or trade secret
 19 information."). The standard of disclosure is far below what BirdDog did here with
 20 respect to the Technical and Economic Trade Secrets alleged in the FAC. (FAC ¶¶
 21 29, 30.) For example, BirdDog provides the following description for one of its
 22 Technical Trade Secrets:

- 23 • a proprietary hardware-based application allowing for implementation of
 24 high-bandwidth Network Device Interface (NDI) capabilities facilitating
 25 networked video systems to identify and communicate with each other and
 26 encode, transmit and receive multiple streams of broadcast-quality, low-
 27 latency video and audio in real time[.]” (FAC ¶ 29.)

1 Knowing such a description surpasses the pleading requirement, Ms. Lee fails
 2 to directly address any of BirdDog’s detailed descriptions and instead simply states
 3 that the “FAC provides an overbroad list” of trade secrets that are “non-specific.”
 4 (Mot. at 13:25-27.) Simply put, Ms. Lee’s argument that BirdDog’s trade secrets are
 5 insufficiently identified is contrary to the pleadings and to law. The trade secrets are
 6 properly identified.

7 **iii. BirdDog Sufficiently Alleges Misappropriation.**

8 Lastly, Ms. Lee contends that BirdDog fails to allege misappropriation. (Mot.
 9 at 13:4-5.) This contention borders on frivolous: mere paragraphs later, Defendants
 10 admit that on two separate occasions, BirdDog’s CEO identified Plaintiffs’ trade
 11 secrets incorporated in Bolin Defendants’ products, a clear misappropriation. (FAC
 12 ¶¶ 64, 65; and Mot. at 14:4-9.) It is irrelevant that Ms. Lee denies this information
 13 constituted trade secrets or that the products incorporated BirdDog’s trade secrets:
 14 that is a paradigmatic disputed issue of fact. Moreover, Ms. Lee knows well, her
 15 acquisition of BirdDog’s trade secrets was improper: BirdDog describes Mr. Lo and
 16 Ms. Lee (acting on behalf of the Bolin Defendants) surreptitiously inducing
 17 BirdDog’s CEO to provide them with trade secrets (FAC ¶¶ 42, 48, and 51) as part
 18 of a scheme to take over BirdDog, as well as Bolin LLC, Bolin Limited, Mr. Lo and
 19 Ms. Lee operating together in furtherance of a conspiracy to improperly acquire, use
 20 and disclose Plaintiffs’ trade secrets. (FAC ¶¶ 92, and 93); 18 U.S.C. § 1839(6) (“the
 21 term ‘improper means’ includes . . . misrepresentation, breach or inducement of a
 22 breach of a duty to maintain secrecy”); *see* Cal. Civ. Code § 3426.1(a) (“‘Improper
 23 means’ includes theft, bribery, misrepresentation, breach or inducement of a breach
 24 of a duty to maintain secrecy”) Misappropriation has been properly alleged
 25 along with Ms. Lee’s critical role in this portion of Defendants’ scheme.

26 ///

27 ///

**C. BirdDog Adequately Pleads Its Claims For Conversion, Violations
Of Penal Code Section 496, And Money Had And Received.**

Likewise, BirdDog adequately pleads its claims for conversion, violations of Penal Code section 496, and money had and received against Ms. Lee. With respect to its claim for conversion, BirdDog has shown its “ownership or right to possession of the property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages.” *Lee v. Hanley*, 61 Cal. 4th 1225, 1240 (2015) (elements of conversion claim); *see* FAC ¶¶ 14, 16, 20, 44-57, 108-111. With respect to its claim for violations of Penal Code section 496, BirdDog has similarly shown that Ms. Lee (1) obtained and aided in obtaining by theft property belonging to BirdDog; (2) concealed or withheld such property and/or aided in concealing or withholding such property from BirdDog, which they knew was obtained by theft at the time they received, withheld, concealed, or aided in concealing or withholding the property; and (3) the violations caused actual loss, damage, and harm. *Siry Investment, L.P. v. Farkhondehpour*, 13 Cal. 5th 333, 355 (2022); *see* FAC ¶¶ 14, 16, 20, 44-57, 112-116. And with respect to its claim for money had and received, BirdDog adequately pleads that Ms. Lee has “in [her] possession money which in equity and good conscience [she] ought to pay over to [BirdDog].” *Rains v. Arnett*, 189 Cal. App. 2d 337, 334 (1961); *Minor v. Baldridge*, 123 Cal. 187, 190 (1898) (money had and received can be used to recovery money obtained by false pretenses); *see* FAC, ¶¶ 13, 14, 20, 44-57, 117-120. A representative example of such a claim is where, as here, there has been a “total failure of consideration or repudiation.” *Brown v. Grimes*, 192 Cal. App. 4th 265, 28 (2011).

Ms. Lee does not challenge that more than \$3,000,000 in BirdDog funds were paid. Instead, she argues that she should be let off the hook because she did not actually receive the funds. (Mot. at 15:18-20, and 16:10-13 [because “BirdDog contracted with and made these payments to Bolin [Limited] . . . [i]t is implausible

1 that [all of these parties] converted the same funds and that all of these parties
 2 simultaneously possess those same funds and/or have jointly used them.”)]. But this
 3 is not what BirdDog pleads. Her denial not only contradicts BirdDog’s joint
 4 tortfeasor allegation but rests on determination of a factual question that cannot be
 5 adjudicated on a motion to dismiss - ***what entity*** owns or controls the bank account
 6 where the funds were transmitted and ***whether and to what extent*** Ms. Lee and the
 7 other defendants exercise joint dominion and control over those funds or aided the
 8 entities that did. Asking, as she does, the Court to make that determination on a
 9 motion to dismiss is plainly inappropriate.

10 Even if that were not the case, neither a conversion nor Penal Code section 496
 11 claim require Ms. Lee to have personally taken money to hold her liable. To establish
 12 a claim for conversion, “[i]t is not necessary that there be a manual taking of the
 13 property; it is only necessary to show an assumption of control or ownership of the
 14 property” *Shopoff & Cavallo LLP v. Hyon*, 167 Cal. App. 4th 1489, 1507 (2008).
 15 Likewise, any “person . . . who conceals . . . withholds, or aids in concealing . . . or
 16 withholding any property from the owner, knowing the property to be so stolen or
 17 obtained” may be held liable for a Penal Code section 496 claim. Cal. Penal Code §
 18 496. Ms. Lee concedes that Plaintiffs’ funds were received. (Mot. at 15:18-20.) This
 19 is more than enough to state these claims at the pleading stage. *See, e.g., Opera*
 20 *Gallery Trading Ltd. v. Golden Trade Fine Art Inc.*, 2015 WL 12912362, at *2 (C.D.
 21 Cal. July 28, 2015) (granting summary judgment on conversion claim in favor of
 22 plaintiffs who “ha[d] the right to possess their respective \$400,000 paid to
 23 [defendant] because they never received the paintings” and defendant admitted to
 24 “appropriating the funds and . . . [that] it has no intention of returning them”); *Cerra*
 25 *v. Blackstone*, 172 Cal. App. 3d 604, 609 (1985) (the “[u]njustified refusal to turn
 26 over possession on demand constitutes conversion even where possession by the
 27 withholder was originally obtained lawfully”).

Ms. Lee’s reliance on *Lashify, Inc. v. Urb. Dollz LLC*, 2022 WL 18278638, at *8 (C.D. Cal. Dec. 13, 2022) and *Wolf Designs, Inc. v. DHR Co.*, 322 F. Supp. 2d 1065, 1072 (C.D. Cal. 2004) are misplaced. Ms. Lee cites *Lashify, Inc.* for the proposition that BirdDog’s tort claims against her are inappropriate because BirdDog has not set forth “individual wrongful acts to support a claim of individual liability.” (Mot., at 17:4-5.) Next, Ms. Lee cites to *Wolf Designs, Inc.* for the proposition that she cannot be held liable as a corporate officer unless she was a primary participant in the wrongdoing. (Mot., at 17:10-15.) Again, Ms. Lee willfully ignores the detailed 38-page, 131-paragraph FAC. As discussed above in Section A, Ms. Lee was a “primary participant” in the alleged wrongdoing and her individual wrongful acts are set forth in exacting detail (e.g., Ms. Lee and Mr. Lo convinced BirdDog to enter into agreements and pay Ms. Lee, together with Bolin Limited, Bolin LLC, Mr. Lo, over \$3,000,000 pursuant to those contracts (FAC, ¶¶ 40-53, 68-83) and when BirdDog simply requested the return of its more than \$3,000,000 in funds, the Bolin Defendants, Mr. Lo and Ms. Lee flatly refused (FAC, ¶¶ 6, 109, 115, and 118)).

Further, BirdDog brings its claims against Ms. Lee in her individual capacity, not as an officer of Bolin Defendants. As such, Ms. Lee’s reliance on *Lashify, Inc.* and *Wolf Designs, Inc.* is misguided.

D. BirdDog Adequately Pleads Its Claim For Intentional Interference With Prospective Economic Advantage.

Ms. Lee’s argument that the FAC “make[s] no effort” to plead (1) “facts separately as to each Defendant,” (2) “other essential facts including . . . any specific economic relationships with third parties” such as “the identity of these purported third parties, why the relationship with these parties contained a probability of future economic benefits, how Ms. Lee personally knew about these purported relationships, and how the alleged failure to deliver cameras disrupted these

relationships[],” (3) “how Ms. Lee specifically and separately interfered,” and (4) “how Plaintiffs were allegedly damaged as a result” (Mot. at 20:15-25.)

This, too, flies in the face of the pleading and Ms. Lee ignores her central role in the Defendants’ brazen scheme. BirdDog adequately pleads all elements of this claim, including (1) economic relationships between BirdDog and third parties with the probability of future economic benefits to BirdDog (*e.g.*, FAC, ¶¶ 24-26, 28, 122); (2) Ms. Lee’s knowledge of those relationships (*e.g.*, FAC ¶¶ 36, 40, 55, 64-67, 123); (3) intentional and independently wrongful acts designed to disrupt those relationships (*e.g.*, FAC ¶¶ 40-53, 124); and (4) actual disruption and economic harm proximately caused by the intentional and independently wrongful acts. (FAC, ¶¶ 40-67, 125). That is all that is required, and is what BirdDog has done. *See Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 944 (stating elements). Defendants acted in concert with one another where Bolin Limited and Bolin LLC, each “controlled by Chief Executive Officer Mr. Lo and managed by Chief Operating Officer Ms. Lee.” (FAC ¶ 3.) They effectuated their scheme in concert, first attempting to acquire BirdDog, then ultimately “placing a ‘hard sharp stop’ on production of all BirdDog products while unlawfully holding and refusing to return more than \$3,000,000 in BirdDog funds.” (FAC ¶ 6.) “Defendants’ apparent and unlawful hope was that their brazen thefts and refusal to deliver BirdDog cameras would damage BirdDog’s reputation by causing BirdDog’s global customer base to question BirdDog’s ability to fulfill their contracts, cease doing business with BirdDog, and – hopefully, in their minds – agree to do business with Defendants.” (FAC ¶ 6.) Ms. Lee and the other defendants implemented this plan in part “in an effort to obtain control of BirdDog and take over its customer relationships - causing BirdDog to lose even more in missed sales and lost profits.” (FAC ¶ 45.) Such customer relationships amount to millions of dollars annually. (FAC ¶ 122.)

BirdDog thus properly alleges this claim against Ms. Lee.

1 **E. BirdDog Adequately Pleads Its Claim For Violation Of California**
 2 **Business & Professions Code § 17200, Et Seq.**

3 Ms. Lee also seeks dismissal of BirdDog’s UCL claim, arguing only that the
 4 “claim is based on the alleged violation of Penal Code Section 496 and alleged
 5 misrepresentations regarding the contracts, both of which necessarily depend on the
 6 existence of a contractual relationship between Ms. Lee and Plaintiffs,” (Mot., at
 7 21:13-16) and “[w]here a UCL action is based on contracts not involving either the
 8 public in general or individual consumers who are parties to the contract, a corporate
 9 plaintiff may not rely on the UCL for the relief it seeks.” (Mot., at 22:4-6.)

10 These, too, contradict the pleading and the law. To bring a claim under
 11 California Business and Professions Code section 17200, a party must “(1) establish
 12 a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e.,
 13 economic injury, and (2) show that that economic injury was the result of, i.e., caused
 14 by, the unfair business practice or false advertising that is the gravamen of the claim.”
 15 *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 322 (2011). Injury in fact is “an
 16 invasion of a legally protected interest which is (a) concrete and particularized,
 17 [citations]; and (b) ‘actual or imminent, not “conjectural” or “hypothetical[.]”’ *Id.* at
 18 322-23; citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *see also*,
 19 *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.*, 21 Cal.4th
 20 352, 362 (1999).

21 Here, BirdDog adequately pleads all necessary factors. **First**, BirdDog clearly
 22 pleads economic injury-in-fact. Among other things, the FAC alleges that as a result
 23 of their joint scheme, Defendants, including Ms. Lee, are withholding \$3,060,883.10
 24 in Plaintiffs’ funds. (See e.g., FAC, ¶¶ 6, 109, 115, and 118.); *Kwikset Corp.*, 51 Cal.
 25 4th at 323 (finding “be[ing] deprived of money or property to which [plaintiff] has a
 26 cognizable claim” is an economic injury under the UCL); *Hall v. Time Inc.*, 158 Cal.
 27 App. 4th 847, 854 (2008), as modified (Jan. 28, 2008) (same).

19 To the extent Ms. Lee argues the UCL claim fails because it “necessarily
20 depend[s] on the existence of a contractual relationship between Ms. Lee and
21 Plaintiffs” (Mot., at 21:12-16), that is simply not correct. Plaintiffs do not allege
22 breach of contract claims against Ms. Lee (*see* FAC), and regardless, as discussed
23 above, Ms. Lee’s wrongful and unlawful acts are independent of Plaintiffs’ contract
24 claims against the Bolin Defendants. BirdDog sufficiently pleads its UCL claim
25 against Ms. Lee.

26 || *///*

**F. BirdDog’s Tort And Penal Code Section 496 Claims Are Not Barred
By The Economic Loss Rule.**

Ms. Lee also argues that BirdDog’s claims for conversion, money had and received, violation of Penal Code section 496, intentional interference with prospective economic advantage, and UCL violations, are “barred by the economic loss rule.” (Mot., at 22:24-25:14.) Not true. Her summary of the economic loss rule is misleading, and her argument that it bars those claims is meritless.

First, tort claims are permitted in contract cases where “the duty that gives rise to tort liability is either completely independent of the contract or arises from conduct which is both intentional and intended to harm.” *Erlich v. Menezes*, 21 Cal. 4th 543, 552 (1999). Where “conversion accompanies a breach of contract, the economic loss rule does not bar the tort claim.” *Bentham v. Bingham Law Group*, 2013 WL 12186171, at *12 (S.D. Cal. Nov. 15, 2013) (citing *Robinson Helicopter Co., Inc. v. Dana Corp.*, 34 Cal. 4th 979, 990 (2004)). And where intentional interference with prospective economic relations is sufficiently pleaded independent of a breach of contract claim, “[t]hey avoid being barred by [] the economic loss doctrine.” *WeBoost Media S.R.L. v. LookSmart Ltd.*, 2014 WL 2621465, at *7 (N.D.Cal., 2014)

Second, the economic loss rule does not apply to Plaintiffs’ Penal Code section 496 and money had and received claims. “Quite simply, the economic loss rule ‘prevents the law of contract and the law of tort from dissolving into one another.’” *Robinson Helicopter Co., Inc.*, 34 Cal. 4th at 988. Penal Code section 496 and Business and Professions Code section 17200 are not tort claims. They are statutory ones. And a money had and received claim is “an action on an implied contract” – not a tort. *Lincoln Nat’l Life Ins. Co. v. McClendon*, 230 F. Supp. 3d 1180, 1188 (C.D. Cal. 2017).

And **third**, as Ms. Lee points out (Mot. at 24:24-25:10), she cannot avail herself of the economic loss rule. Plaintiffs did not assert a breach of contract claim against

1 her. (See FAC.) Because Plaintiffs do not seek to recover tort damages for a breach
2 of contract claim against Ms. Lee, the economic loss rule does not apply to her.

3 **G. BirdDog's Claims Are Not Subject To A Heightened Pleading**
4 **Standard.**

5 Finally, knowing that BirdDog sufficiently pleads its claims to satisfy the
6 ordinary pleadings standards of Rule 8(a), Ms. Lee argues, or rather simply states in
7 conclusory fashion, that the heightened pleading standard applies to the claims.

8 Not so. The mere fact that Ms. Lee's scheme to take control of BirdDog along
9 with the other defendants by stealing its money and using its trade secrets, as
10 improper and unlawful as it is, does not trigger heightened pleadings standards to
11 satisfy requirements for claims that are "grounded" or "sound" in fraud. Although
12 Rule 9(b)'s heightened pleading standard may be required for allegations "grounded
13 in fraud," a given allegation is not grounded in fraud unless it relies "entirely on a
14 unified fraudulent course of conduct." *Kearns v. Ford Motor Co.*, 567 F.3d 1120,
15 1126 (9th Cir. 2009) (citing *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1105-
16 1106 (9th Cir. 2003)). And even were that not the case, paragraph upon paragraph
17 of BirdDog's FAC more than satisfies the heightened pleading requirement, showing
18 the "who, what, when, where and how" of Ms. Lee's scheme. Regardless, it is well-
19 established that Rule 9(b) does not require dismissal when "essential information lies
20 uniquely within another party's control," as is the case here with regard to the
21 particulars of Ms. Lee's demands at this time. *Exergen Corp. v. Wal-Mart Stores,*
22 *Inc.*, 575 F.3d 1312, 1327 (Fed. Cir. 2009).

23 **V. CONCLUSION**

24 For the foregoing reasons, BirdDog respectfully requests that the Court deny
25 Ms. Lee's Motion in its entirety. Alternatively, to the extent the Court finds any of
26 the claims are not sufficiently pleaded, BirdDog respectfully requests leave to amend.

27 ///

Respectfully submitted,

K&L GATES LLP

Dated: February 16, 2024

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains 6,197 words, which complies with the word limit of L.R. 11-6.1.

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Dated: February 16, 2024

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